

codex alimentarius commission



FOOD AND AGRICULTURE
ORGANIZATION
OF THE UNITED NATIONS

WORLD
HEALTH
ORGANIZATION



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Agenda Item 5

CX/GP 04/20/5-Add.3

JOINT FAO/WHO FOOD STANDARDS PROGRAMME CODEX COMMITTEE ON GENERAL PRINCIPLES

Twentieth Session

Paris, France, 3 - 7 May 2004

PROPOSED DRAFT REVISED CODE OF ETHICS FOR INTERNATIONAL TRADE IN FOODS

GOVERNMENT COMMENTS AT STEP 3

(Brazil, United States)

BRAZIL

Text in bold: proposals of inclusion;

Text in red: justification of Brazil's proposals

ARTICLE 1 - OBJECTIVE

1.1 The objective of this code is to provide [advice/guidance] to ~~governments~~ **member countries** and thereby to protect the health of the consumers and ensure fair practices in the food trade.

Justification: Brazil considers that the word guidance is the best option to reflect the objective of the Code and would like to propose changing the word governments by member countries, in order to harmonize the terminology used throughout the text.

~~1.2 The code is designed for use by member governments, by those engaged in international trade and by producers and consumers in order to judge whether trade practices are acceptable.~~

Justification: Brazil proposes the exclusion of this item since its content is already expressed in item 7.3.

ARTICLE 2 - SCOPE

This code applies to all ~~food introduced into~~ international trade **in food** and applies *mutatis mutandi* to concessional and food aid transactions.

Justification: Brazil proposes this changing in the phrase since the Code aims at establishing guidance to the relations between countries in the international trade in food. It does not make sense the original construction of the phrase.

ARTICLE 3 - DEFINITION

"Food" means any substance, whether processed, semi-processed or raw which is intended for human consumption and includes drink, chewing gum and any substance which has been used in the manufacture, preparation or treatment of "food" but does not include cosmetics or tobacco or substances used only as drugs.

Brazil would like to remind the discussion held during the 18th meeting of CCGP on the necessity of revising this definition (paragraph 55 of ALINORM 03/33A) and would like to know when the discussion paper (CX/GP 04/5 Add 2) considering this issue will be presented.

ARTICLE 4 - GENERAL PRINCIPLES

4.1 International trade in food and food aid transactions should be conducted in a manner that is consistent with the objectives of ensuring the protection of consumers' health and fair practices in food trade,

especially taking into account the Codex *Principles for Food Import and Export Inspection and Certification*.

[4.2 International trade in food should be consistent with the obligations of member countries under the SPS and TBT Agreements.]

~~4.3 Countries should ensure that their national regulations do not create unjustified barriers to trade.~~

4.3 In the preparation and application of food regulations, member countries should ensure that their national regulations do not create unjustified barriers to trade.

Brazil would like to propose this new wording for item 4.3.

4.4 Appropriate national food standards, based on risk analysis where applicable, should be established and enforced ~~[through harmonization with]~~ [taking into account] the standards and related texts established by the Codex Alimentarius Commission.

Justification: In Brazil's view the most appropriate wording is taking into account.

4.5. In the preparation and application of food regulations, **member** countries should take into account the special needs and situation of developing countries, in conformity with the provisions of the SPS and TBT Agreements. ~~While not lowering the level of consumer health protection, importing countries should recognize the difficulties of developing countries in ensuring that the food they produce, import and export meets international standards.~~

~~4.6. Developing countries should be encouraged to ensure the safety and quality of the food they produce on the basis of international standards. Developed countries should facilitate programmes, including those of FAO and WHO, to enhance the capability of developing countries to produce, import and export safe and wholesome food.~~

4.6 While not lowering the level of consumer health protection, when it is recognized the difficulties of member countries in ensuring that the food they produce, import and export meets international standards, FAO and WHO should facilitate programmes to enhance the capability of these countries to produce, import and export safe and wholesome food.

Justification: Brazil proposes to use the expression member countries in item 4.5, to be in accordance with the terminology used throughout the text. In addition, Brazil proposes the exclusion of the second part of paragraph 4.5 and the whole paragraph 4.6, with the inclusion of a new text as paragraph 4.6, since it is Brazil's view that the content of these paragraphs expresses a strong prejudice against developing countries.

ARTICLE 5 – REQUIREMENTS FOR FOOD IN INTERNATIONAL TRADE

[5.3 No food should be in international trade **and food aid transactions** which:

- (a) has in or upon it any substance in an amount which renders it poisonous, harmful or otherwise injurious to health; or
- (b) consists in whole or in part of any substance which is unfit for human consumption or contains foreign matter to an extent which makes it unfit for human consumption; or
- (c) is adulterated; or
- (d) is labelled or presented in a manner that is false, misleading or deceptive or that may adversely affect the safety of the food; or
- (e) is prepared, packaged, stored, transported or marketed under unsanitary conditions;
- (f) has a remaining shelf-life that will not allow its distribution in the importing country before the expiry date.]

Justification: Brazil suggests the inclusion of the expression “ and food aid transactions “, in order to be coherent with other sections of the Code.

ARTICLE 7 - RESPONSIBILITIES FOR IMPLEMENTATION

7.1 The implementation of this code rests with:

- (a) member countries who should,
 - (i) provide adequate food legislation and food control infrastructures, including certification and inspection systems and other legal or administrative procedures that also apply to re-exports of food as appropriate and necessary;
 - (ii) work with the regulated industry, including all food manufacturers, distributors, transporters and all others concerned with the international trade in food - particularly in respect of Article 5.1 (d) – to ensure that the Requirements of Article 5 are taken into account; and
- (b) more especially exporting countries who should:
 - (i) employ as appropriate and practicable, legal or administrative controls aimed at preventing the exportation of shipments of food which does not comply with the provisions of Articles 5.1 ~~or~~ **and** 5.2;

Justification: Brazil understands that the correct mention in item 7.1 (b) (i) is and not or, because the provisions of both items are applicable.

- (ii) promptly notify the importing country of the exportation of shipments of food found not to comply with Article 5.1 when legal or administrative means of preventing exportation are not available or were unsuccessfully applied or where non-compliance was determined after exportation;
- (iii) make available to the importing country upon request appropriate certification, inspection or other procedures as appropriate with the manner of compensation for these services to be agreed upon between the governments.

and further, will depend on

- such cooperation and consultative procedures as may be established between governments of importing and exporting countries, and, generally, between all those concerned with international trade, and
- the extent to which international food standards and related texts, elaborated by the Codex Alimentarius Commission are considered and applied where relevant and appropriate.

7.2 In order to facilitate the implementation of the Code, **member** countries should ~~[apply]~~ [take into account] the *Codex Guidelines for the Design, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification Systems* to the fullest extent possible.

Justification: Brazil proposes to use the expression member countries, to be in accordance with the terminology used throughout the text., and considers the expression “ take into account” most appropriate.

7.3 The code should be promoted by **member countries** ~~governments~~—in their respective territorial jurisdictions in accordance with their legal and administrative procedures regulating the conduct of exporters and importers **and all those engaged in international trade.**

Justification: Brazil proposes to use the expression member countries, to be in accordance with the terminology used throughout the text, and considers that the addition of this expression at the end of the paragraph covers all sectors that should be regulated by this Code.

UNITED STATES OF AMERICA

General Comments

The United States appreciates the work that has been accomplished in the development of the Revised Code of Ethics for International Trade in Foods, as drafted.

The United States has several specific comments on the text (below). However, the Committee must take care to assure that the scope of the document focuses on the Codex mandate, that is, consumer health and fair trade. In a document dealing primarily with ethics in fair trade, it is easy to stray into areas that do not fall within the Codex mandate but which are, nevertheless, of interest to members and may indirectly be related to fair trade practices. Introduction of such issues will make achieving consensus within the Committee more difficult. The U.S. believes that it might be possible for CCGP to achieve consensus on a document solely related to the mandate of Codex.

The United States believes that a more fundamental issue is the status of this text under the WTO SPS and TBT trade agreements. The U.S. requests that the Committee have a complete discussion of the status of the code before further developing the text. The U.S. believes that until this discussion is completed, no Committee resources should be expended on developing the text.

SPECIFIC COMMENTS

ARTICLE 1 - OBJECTIVE

This Code is advisory in nature and not necessarily intended to be adopted into national legislation. Therefore, in Article 1.1 the U.S. supports striking the square brackets and striking the word “guidance”, to read:

The objective of this code is to provide advice to governments and thereby to protect the health of the consumers and ensure fair practices in the food trade.

The U.S. believes that to further emphasize the status of the text, Article 1.2 should be rewritten to read

"The code is advisory to member governments, those engaged in international trade in food, and citizens to aid in judging whether trade practices are acceptable."

ARTICLE 3 - DEFINITION

The United States looks forward to commenting on the Secretariat’s discussion paper considering issues related to the definition.

ARTICLE 4 - GENERAL PRINCIPLES

The United States supports deleting the brackets in Article 4.2 and retaining the text to read:

International trade in food should be consistent with the obligations of member countries under the SPS and TBT Agreements.

The United States supports deletion of Article 4.3, as this is adequately covered in Article 4.2.

In Article 4.4, the United States supports the wording "taking into account", as this is consistent with member country obligations under the WTO trade agreements. The Article would read:

Appropriate national food standards, based on risk analysis where applicable, should be established and enforced, taking into account the standards and related texts established by the Codex Alimentarius Commission.

For editorial consistency, the word “situation” in Article 4.5 should be made plural to read “*situations*”.

ARTICLE 5 – REQUIREMENTS FOR FOOD IN INTERNATIONAL TRADE

The United States questions the practicality of Article 5.1 (b). An importing country will not know to inform the exporting country in advance of food being presented for import. The notification requirements of the SPS agreement were intended to address this situation. Therefore, in Article 5.1 (b), the U.S. would delete all text after the semicolon and substitute text to read:

(b) to such food legislation as may be in force in the exporting and/or importing country; food standards and safety requirements of importing countries should be transparent and available to exporting countries

In Article 5.2, the United States believes that health hazards must be scientifically identified, and would rewrite the article to read:

Except when the food represents a scientifically identified hazard to health, a country may export food that does not comply with its national regulations if that food complies with the regulations of the importing country and is exported in accordance with the requirements of the importing country.

In Article 5.3, the United States would delete the square brackets around the Article. Also, the U.S. believes that Articles 5.3 (a) and (b) define adulteration and Article 5.3(c) is unnecessary and should be deleted. Otherwise, the inclusion of article 5.3(c) implies that there is something beyond 5.3 (a) and (b) that constitutes adulteration, but what that might be is never defined in Codex.

ARTICLE 6 – IMPLEMENTATION

In Article 6.1, the first bullet point after 6.1 (c), the authorities of the importing country should inform **the exporter** and the competent authorities of the exporting country.

ARTICLE 7 - RESPONSIBILITIES FOR IMPLEMENTATION

In Article 7.1 (a) (ii), the United States would change the word “requirements” to “provisions”. The U.S. does not believe that reference to requirements is appropriate within an advisory Codex text.

The United States would delete all of Article 7.1 (b), for the following reasons:

1. The responsibilities for “legal and administrative controls” to ensure safe food products enter channels of trade, rests equally with the importing and exporting country;
2. Notifications between countries regarding noncompliance is adequately covered by other provisions contained within this Code and by specifically referenced Codex documents contained within; and
3. Certification regulations as well as inspection procedures and compensation for such are determined by national legislation and regulation and cannot be dictated by importing countries to exporting countries. Importing countries have a sovereign right to establish standards that can be justified and do not provide unnecessary barriers to trade. If an exporting country cannot or will not implement procedures to meet those standards and, thus, facilitate the export of products, trade remedies and mechanisms are available to challenge. In addition, certification and inspection are issues appropriately addressed within the Committee on Food Import Export Inspection and Certification.

In Article 7.2, the United States supports the wording “take into account”, therefore, this article would read:
In order to facilitate the implementation of the Code, countries should take into account the Codex Guidelines for the Design, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification Systems to the fullest extent possible.

Regarding Article 7.3, the United States agrees that member countries should encourage ethical trade practices. However, the U.S. questions whether it is appropriate to countries “promoting” the Code, given the voluntary nature of Codex texts. Adoption or acceptance (and promotion) of any Codex Code is at the discretion of national governments.

ARTICLE 6 – IMPLEMENTATION and ARTICLE 7 - RESPONSIBILITIES FOR IMPLEMENTATION

The United States believes that Articles 6 and 7, as drafted, contain a number of redundancies and could be combined and simplified to read as follows:

Article 6 IMPLEMENTATION AND RESPONSIBILITIES

6.1 *The implementation of this code rests with Codex member countries. These countries should:*

- (i) provide adequate food legislation and food control infrastructures, including certification and inspection systems and other legal or administrative procedures that also apply to re-exports of food as appropriate and necessary; and should promote transparency in all aspects of food control to promote compliance*
- (ii) work with the regulated industry and other affected stakeholders to ensure that food products not conforming to the provisions of Article 5.3 do not enter international trade.*
- (iii) establish consultations and cooperation between importing and exporting countries; and*
- (iv) take into account the Codex Guidelines for the Design, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification Systems to the fullest extent possible.*

6.2 *When food is rejected by an importing country because it is found to be:*

- (a) injurious to public health and safety, or*
 - (b) not in compliance with a standard, code of practice or other generally accepted certification system, whether in respect of the label accompanying the product or otherwise, or*
 - (c) not in conformance with the provisions of this code with respect to fair practices in food trade*
- the authorities of the importing country should, in accordance with the Codex Guidelines for the Exchange of Information between Countries on Rejections of Imported Food, inform the exporter and the competent authorities of the exporting country of the details and reasons for rejection.*

6.3 *Except when the food represents a hazard to health, food that has been exported and subsequently rejected may be*

- re-exported to the exporting country; or*
- re-exported to another country with appropriate disclosure of the reasons for rejection.*

ARTICLE 9 - EXCHANGE OF INFORMATION

Exchange of information is the subject of another Codex document under development in the Codex Committee on Food Import and Export Inspection and Certification Systems. Reference to this document in the Articles above should be sufficient. Therefore the United States recommends that this article be deleted.